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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,430	03/30/2001	Pamella A. Costello	COSTEL 3.0-001	8754
530	7590	04/22/2004	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			NGUYEN, ANTHONY H	
			ART UNIT	PAPER NUMBER
			2854	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/823,430		COSTELLO, PAMELLA A.	
	Examiner		Art Unit	
	Anthony H Nguyen		2854	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Nopper et al. (US 5,021,638) in view of King-DeBaun (US 6,285,299).

With respect to claims 1 and 18, Nopper et al. teaches the keyboard cover having substantially the structure and method as claimed. For example, Nopper et al. teaches a keyboard cover 24 having a top panel 28, a vertical side, front and rear panels as shown in Figs.3 and 3a of Nopper et al. Nopper et al. does not teach the top panel which does not correspond to the depressions or elevation of a specific keyboard array. King-DeBaun et al. teaches a keyboard cover 13 having a top panel (Fig.2, no numeral reference) or 18 as shown Fig.3 which does not correspond to the depressions or elevations of a keyboard 20. It would have been obvious to one of ordinary skill in the art to modify the keyboard of Nopper et al. by providing the top panel as taught by King-DeBaun et al. for simplicity in design of a keyboard cover. With respect to claims 2, 3 and 10, Nopper et al. teaches the cover which includes elastomeric material such as silicone rubber (Nopper et al., lines 25-27). With respect to claims 4 and 5, Nopper et al. teaches the plate 40 which overlays a portion of the obverse keyboard face. With respect to claim 6, the use of keyboard cover having side panels which has less elasticity than the a top panel is well known in the art. With respect to claims 10-14 and 17, the selection of a desired material for forming the cover involves only an obvious matter of design choice based upon

obvious experimentation. With respect to claim 15, note that the keyboard cover of Nopper et al. having an opening 38 (Nopper et al., Fig.3 and 3a) which is smaller than the obverse face of the keyboard 36. Therefore, the cover is inherently stretched to permit entry of the keyboard. With respect to claim 19, the steps of having at least one user “apply to said keyboard prior to use” and “removing prior to use of a said keyboard by another, of a personal, easily removable keyboard cover” would have been obvious to one of ordinary skill in the art of preventing or avoiding a transmission of disease since the steps of applying and removing a personal cover to an apparatus used by many users is well known. For example, a traveler uses a personal ear-phone cover provided by a fly attendant for listening music on an air plane.

Response to Arguments

Applicants' arguments filed on December 19, 2003 have been fully considered but they are not persuasive of any error in the above rejection.

Applicant argues that Nopper et al. and King-Debaun fail to teach the structure and method as recited in claims 1 and 18.

However, it is noted that the claims are not directed to a method as argued by applicant. Also, as explained above, Nopper et al. clearly teaches the keyboard cover having a top panel, a vertical side, a front panel and a rear panel as shown in Fig.3 of Nopper et al. King-Debaun shows the keyboard cover which does not correspond to the depression or elevation of the key. Therefore, the combination of Nopper et al. and King-Debaun renders obvious the protective enclosure or cover as broadly recited in the claims. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can

only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Nopper et al. and King-Debaun teach a keyboard cover which are in the computer keyboard cover art. One of ordinary skill in the art would have been well aware of the simplicity of the well-known keyboard cover as exemplified by King-Debaun and would have found its use in Nopper et al. to have been obvious.

Applicant argues that there is no suggestion of the method or the need to avoid disease transmission in the art.

As explained above, the broad steps of avoiding a transmission disease using a keyboard are obvious in view of a personal ear-phone cover. It is also noted that the steps of avoiding the transmission of disease carrying organism between users using a keyboard by applying and removing the cover are merely recited the purpose of a process or the intended use of the keyboard cover to avoid the transmission of disease which have no evidence to support the claim. Therefore, there is no apparent unobviousness in the using of the keyboard cover as recited relative to the structure of the prior art as applied. More importantly while applicant has pointed out differences between the manner in which a computer keyboard is used and the use of an ear -phone cover, the record is lacking in any evidence indicating any unobviousness in these differences. Under 35 U.S.C. § 103, differences are of no patentable significance unless it can be shown that they are unobviousness to one of ordinary skill in the art. While applicant makes a general statement about applicant's suggestion of the need to avoid disease transmission, there is

no evidence in the record to support these very broad and self serving opinions. Opinions unsupported by evidence do not establish unobviousness. Thus, it is believed that the rejections are proper and the prior art applied renders obvious the structure recited by the claims.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

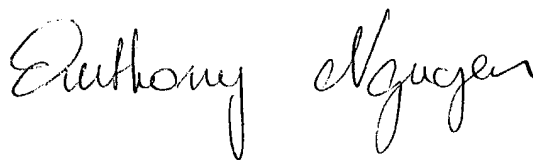
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Nguyen whose telephone number is (571) 272-2169.

The examiner can normally be reached daily from 9 AM to 5PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Hirshfeld, can be reached on (571) 272-2168. The fax phone number for this Group is (703) 872-9306.

Art Unit: 2854

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, reading "Anthony Nguyen". The signature is written in a cursive style with a large, stylized 'A' and 'N'.

Anthony Nguyen

4/16/04

Patent Examiner

Technology Center 2800